

## Islamic Concept of Peace and Justice in the Context of War on Terror

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\*Zafar Iqbal

\*\*Farkhanda Zia Mansoor

### *Abstract*

*This study explores what is Islamic concept of peace and justice with specific reference to war of terror (WOT) and how does Islam help in fighting terrorism. In this endeavor, the study analyses significance of patience, tolerance, forgiveness and unity in human life vis-à-vis vengeance and reprisal behaviour. Simultaneously, it highlights role of different organs of criminal justice system i.e. police, judges and prisons as well as importance of witnesses and evidence in the administration of criminal justice. The study emphasizes that real facts, untainted and impartial testimony, dedicated and God fearing judges assisted by professional and motivated prosecuting and investigating officials are hallmarks of the desired system of criminal justice in Islam. This article is mainly based on the Qur'aanic text with some references to the traditions of the Holy Prophet (peace be upon him). Reference to the books of traditions and Islamic jurisprudence has been avoided for the sake of brevity and the scope of discussion. Instead of reproducing verbatim translation of the verses from the difficult English texts of the translations by scholars like Muhammad Marmaduke Pkthal, Abdullah Yousaf Ali and others, effort has been made to transcribe the substance into easy English using the Arabic text with Urdu translations and commentaries by Molana Shabbir Ahmad Usmani, Shah Abdul Qadir Dehlvi, Mufti Muhammad Shafi, Molana Moudoodi, Peer Muhammad Karam Shah, Molana Muhammad Juna Ghari, Justice (Retired) Muhammad Taqi Usmani (English translation) etc. The study concludes that clear and specific rulings and guidelines for the administration of justice and to fight terrorism in the existing scenario are contained in the Holy Qur'aan and traditions of the Holy Prophet. Both the followers of Islam and the world at large may benefit from these principles and rulings. Peace through justice is considered a fallacy and an illusion, but may be achieved through the coordinated efforts and will of the concerned state organs.*

**Keywords:** Peace and Justice, War on Terror, Justice in Islam, Equality before Law, Equal Protection of Law, rule of law, Magnanimity, Repentance and Acquittal, *Fasad Fil-ardh*, Punishments in Murder and Terrorism Cases.

### **Introduction:**

Islam is a religion of peace, fraternity, discipline, obedience and justice. Islam ordains its followers to lead a disciplined and peaceful life, respect rights of other human beings and even the animals. Islam advocates peace, by its definition and manifestation, directs its followers to obey the commandments of Allah, His

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\*Research scholar, National Defence University, Islamabad.

\*\*Professor of Law, International Islamic University, Islamabad.

Prophet (peace be upon him) and the persons in authority i.e. the rulers; Islam advises the Muslims to help a truce or reconciliation amongst the persons engaged or likely to be engaged in conflict, orders the Muslims to be witnesses in justice and ordains them to do justice, as it is closest to piety. The religion fetches obedience and discipline by a multi-faceted approach of rewards and punishments in this world and the world hereafter. It does not treat the criminals or the convicts as condemned for whole life but provides them the opportunity for repentance, rehabilitation and forgiveness.

Islam hates crimes not the criminals, especially those who remorse or have earned conviction and mended their ways. Though it ordains deterrent punishments but requires strong, reliable and trustworthy corresponding evidence before inflicting punishments. It discourages perjury and suggests that evidence of a proven and habitual liar should not be accepted unless his repentance is testified. This is how it ensures peace in the society and adopts a balance approach in the administration of justice. This *ratio decidendi* is evident and pronounced in the Islamic teachings contained in the Holy Qur'aan, Sunnah of the Holy Prophet (peace be upon him) and Ijma (consensus of the righteous companions of the Prophet), as shall be discussed in the succeeding paragraphs.

#### **Statement of the Problem:**

It is a general perception that Muslim fundamentalists are the root cause of terrorism and Islam encourages terrorism in the name of *jihad*. On the other hand, if it is believed that Islam as a matter of principle recognizes sanctity of human life and discourages bloodshed, it is argued that it has a very weak system of criminal justice, which does not meet the challenges of WOT.

#### **Hypothesis:**

Islamic system of criminal justice is more comprehensive and effective to fight war against terrorism as compared to the ordinary systems of criminal justice.

#### **Research questions:**

In order to analyze the hypothesis, following research questions and issues have been framed:-

- What is the nature and extent of terrorism and the punishment prescribed in Islam for such offence?
- What is the Islamic strategy to minimize crime and fight terrorism?
- What are different parameters of criminal justice system recognized in Islam?

#### **Significance of the study and likely benefit:**

The study is likely to dispel the impression that Islam does not value human life and encourages bloodshed. Rational analysis and outcome of the discussion may also help understand parameters and guidelines of the Islamic justice system to fight terrorism in a more effective manner.

### **Research Methodology:**

Explanatory and analytical approach has been followed to describe and resolve the research questions and issues framed to prove or rebut the hypothesis.

### **Review of Literature:**

Countless commentaries and explanations on the Holy Qura'aan and books of *Ahadith* have been written as referred in the abstract. However, the research focuses mainly on the text of the Holy Qura'aan and the traditions of the Holy Prophet (peace be upon him) to find out answers to the queries raised and present a realistic analysis of the issues framed therein.

### **What is the Nature and Extent of Terrorism and the Punishment Prescribed in Islam for such Offence?**

In the existing scenario of war against terrorism in Pakistan and the challenges confronted by the judiciary, it is important to discuss two major offences i.e. culpable homicide and terrorism, which have been described as '*qatl*' and '*harrabah*' or '*fasad fil-ardh*' in the language of the Holy Qur'aan. The other synonymous words are murder or culpable homicide not amounting to murder for '*qatl-i-amd*' and '*qatl-i-khata*' etc and robbery or *banditry* for '*harrabah*'. Again '*harrabah*' and '*fasad fil-ardh*' may be described as complementary to each other and synonymous to terrorism.

Though the term terrorism has been defined in a variety of ways in different countries and it is difficult to find a unanimous or approved definition of it, yet the term '*fasad fil-ardh*', which is more corresponding to terrorism, may be simply described as rebellion, high treason, mischief, disorder, brawl, melee or disturbance in the earth. The Holy Qur'aan describes murder as the most heinous and worst of the crimes by stating that anybody who kills another person except the one who has committed murder or '*fasad fil-ardh*', his offence is so heinous in nature as if he has killed the whole of mankind; and anyone who protects or saves a life, his act is appreciated and considered as if he has saved the whole of mankind.<sup>1</sup> This commandment of Allah Almighty signifies sanctity of human life in Islam.<sup>2</sup> The Holy Qur'aan also guides the Muslims "not to put yourself in a situation which may contribute to your death" or "not to kill yourself with your own hands".<sup>3</sup>

These verses prohibit bloodshed, suicide and even involvement in such conflicts or create such situations which may lead to bloodshed or frustration to commit suicide or even any deliberate plan to cause or motivate others to commit suicide or take the life of any other. No person, irrespective of religion, caste, language etc, is permitted to commit suicide or take the life of the other except in accordance with law and in execution of *qisas* i.e. sentence for causing death of another or creating disorder or '*fasad fil-ardh*'. This also implies that in other offences, the sentence of death shall not be inflicted. However, this principle exempts killings in the battle field and in the heat of battle except if anybody surrenders or seeks refuge or enters into a truce. This refuge may be actual or implied e.g. by accepting Islam or declaring to have converted as a Muslim even by words of mouth only when in fear of instant death during the battlefield. The Holy Prophet (peace be upon him) expressed his sorrow when he was reported that Usman

bin Zaid bin Harisah had killed a man in the battle despite the fact that he had recited the Kalima i.e. declared 'there is no God except Allah', when he was overpowered by Usama. Though Usama justified his killing on the plea that he had embraced Islam by words only to save his life but the Holy Prophet (*peace be upon him*) was not inclined to concede to his stance.<sup>4</sup>

This is a general prohibition of taking the life or intentionally causing death of any person. However, if anybody commits murder of another in disregard to the commandment of Allah and His Prophet (meaning thereby that he wages war against Allah and His Prophet) or causes '*fasad fil-ardh*', such people must be sentenced to death either by way of slaughter, homicide or hanging, or their hands and feet in the cross section i.e. right hand and left foot and vice versa be cut or they are banished. This shall cause them disgrace and opprobrium in this world; while they would be subjected to severe punishment in the dooms day. However, in the case of '*fasad fil-ardh*' or war against Allah and His Prophet (*peace be upon him*), wherein no death has been caused, if the disobedient repent and mend their ways with recourse to obedience before they are apprehended and put to trial, they may be exempted from the punishment ordained by Allah Almighty.<sup>5</sup>

But if they are caught red handed before the confirmed repentance and recourse to obedience, the prescribed punishment shall be awarded. Similarly, if death or any injury has been caused, the punishment prescribed for death or the injury shall be inflicted, unless the same is waived of or compounded by the legal heirs of the deceased or the aggrieved person. And the punishment, as a matter of *hadd*, prescribed for such offense is "life for life, eye for eye, nose for nose, ear for ear, tooth for tooth and infliction of same injury for injury"; however, if the accused is pardoned by the aggrieved party, it will have the effect of condonation of the offence and amount to acquittal of the accused. And those who does not decide or judge the disputes in accordance with the (divine) rulings of Allah as revealed in the Holy Qur'aan, are verily cruel.<sup>6</sup> Such cruel people may not be described as just or assigned the responsibility to administer justice. This is a wholesome package for the administration of criminal justice for all times to come and had been actually ordained in *Tourah* (the old testament) for the Jews and Christians which is equally applicable to Muslims, especially in the wake of WOT and to fight terrorism. The punishment will have to be inflicted if the mandatory evidence of requisite quality is available, unless the same is voluntarily waived off or pardoned or compromised in the above terms and in accordance with the principles of Islamic jurisprudence. No sentence may be awarded or executed or mitigated except in terms of the explicit Qur'aanic guidance.

On the other hand, declaring the Muslims as infidels, raising arms against them in the name of jihad, declaring decrees for their killings and waging war against the established government are not only great sins but also amount to creating disorder or '*fasad fil-ardh*' in the name of Islam; hence cognizable. It is astonishing as to how the people who commit '*fasad fil-ardh*' in the name of Islam disregard Qur'aanic narrative "And do not desire mischief or strive for disorder on earth; Allah does not like those who create mischief or disorder".<sup>7</sup> It is difficult to understand

how they declare the Muslims as infidels and resort to their killings; and forget the tradition of the Holy Prophet in which even cursing or rebuking anyone has been prohibited; what to talk of declaring any Muslim as infidel. The Holy Prophet (*peace be upon him*) ruled that if any person curses the other, if the later deserves curse, he is rebuked once, but if he does not deserve curse, the former receives curse forever.<sup>8</sup> Similarly, in spite of declaration of the Holy Qur'aan that the hypocrites (pretenders in Islam) cheat Allah<sup>9</sup> and the Holy Prophet despite knowing them, including *Abdullah Bin Ubai*, who was a known hypocrite, never snubbed or cursed them. Simultaneously, the Holy Prophet (*peace be upon him*) described whole of Muslim *Ummah* as a single person, who if experiences pain in his eye or head, the whole body suffers the pain and affected by it.<sup>10</sup> He even forbade the Muslims of merely frightening the others, by declaring 'it is not permissible for a Muslim to even frighten the other'.<sup>11</sup>

In this milieu, it is inescapable that those who commit atrocities and terrorism are dealt with in accordance with the teachings of Islam as the Holy Qur'aan states "*wal fitnatu asshaddo minal qatl*" i.e. revolt or mischief is even a greater sin than murder.<sup>12</sup> Allah Almighty in unambiguous terms declares that *qisas* i.e. punishment of death or causing similar injury, guarantees security of life (and even liberty) and invites the intelligentsia to understand the underlying significance of *qisas*, rather than challenging the wisdom of Allah and avoiding execution of *qisas*. If you execute *qisas*, it is expected that you will save yourself and prevent bloodshed and destruction.<sup>13</sup> It is also inconceivable as to how such people, who not only claim to be Muslims but in fact are Muslims, as they recite *Kalima* and are fighting in the name of Islam, disregard the Qur'aanic decree i.e. whosoever intentionally kills a Muslim, his (eternal) punishment is permanent stay in hell, Allah's wrath or curse and great torture.<sup>14</sup> And that those who cause oppressions and sufferings to Muslim men and women; and do not repent or seek forgiveness of Allah will face severe punishment in hell.<sup>15</sup> The Holy Prophet (*peace be upon him*) signified "respect for human life" and importance of fraternity by declaring that mere "abusing a Muslim is sinful while fighting against him or killing him is disbelieving".<sup>16</sup> He also cautioned that if two Muslims confront with swords i.e. raise arm against each other, and if one is killed they shall both be in hell.<sup>17</sup>

The question arises why both? Because each of them intended to kill the other in disregard to the "respect for human life and sanctity of the human beings", the best of creatures.<sup>18</sup> It is in fact not expected of a Muslim to kill any human being especially a Muslim except by mistake of act or fact; and that is why the (mandatory) punishment prescribed for homicide by mistake is *diyat* i.e. compensation to the legal heirs of the deceased, if waived, or setting a slave at liberty.<sup>19</sup> However, it is against the spirit of Allah's commandment that when it came to the execution, severe punishments are awarded but when the issues of waiver, repentance, remorse; forgiveness, amnesty are raised, the same are set aside in the name of terrorism even though the accused is just a suspected and not proved or confirmed terrorist.<sup>20</sup>

### **What is the Islamic Strategy to Minimize Crime and Fight Terrorism?**

Islam follows a multi-thronged strategy to minimize crime and fight terrorism. In the first instance, it seeks obedience to command and law, discourages conflicts and suggests a reconciliatory approach to resolve the conflicts before they turn into revengeful pursuits and terrorism. Secondly, Islam ordains its followers to unite for Allah and peace, fight terrorism through a collective will, which may include a combat approach and proper administration of justice, with emphasis on competence of witnesses and judges. Since the scope of this discussion is limited, combat portion of the strategy has been kept out of the domain of this study. Simultaneously, Islam does not close the doors of repentance and forgiveness; rather the Holy Qur'aan suggests that Allah Almighty may even convert the bad deeds into good deeds of those who repent, embrace Islam and continue to do good deeds.<sup>21</sup> The said strategy in brief is discussed in the following paragraphs.

#### **Recourse to Reconciliation:**

This is the first approach to resolve the conflicts and fight terrorism. Islam discourages conflict and promotes unity amongst people. There is no cavil in the preposition that crime is an offshoot of deprivation in society, clash of interests and incapacity of the organs of criminal justice system. In this context, the Holy Qur'aan stipulates: O servants of Allah, be brotherly of each other; and remember that good and evil deeds cannot be equated with each other. Therefore, repulse the evil with good and demonstrate good behavior even though you had been wronged. If you follow this practice, you will find that the worst of your enemy has become your fast and intimate friend. But this virtue of repelling the evil with good is blessed to those who demonstrate patience and who are lucky.<sup>22</sup>

Similarly the Muslims are advised to invite the people in path of Allah with wisdom, sincere advice and logic as it is the most suitable course of action. And in case any pain or injury is caused to them, they should restrict themselves to the similar pain or injury, instead of transgressing the balance. They are further advised to bear patience instead of revenge, as it would be more rewarding for them, for Allah is companion of those who are God-fearing and beneficent<sup>23</sup> This command is for the whole of mankind, irrespective of caste, colour, creed, religion, sect and beyond geographical boundaries, to maintain brotherly relations with each other. This will promote humanity, fraternity, tolerance, patience, sacrifice and sow the seeds of peaceful co-existence, like brothers and a family. But the humans, being the social animals are likely to commit follies and develop differences amongst each other, have been directed firstly, not to engage in differences and disunite themselves;<sup>24</sup> secondly, if they develop the differences, it is desirable to resolve the difference through mediation and reverting to the commands of Allah, His Messenger and the persons in authority as that is the best option.<sup>25</sup>

Although direct addressees of this command are Muslims, being the followers of Islam, yet non-believers are also invited to taste the fruit of this tree of unity of command. If the Muslims are able to resolve their difference through recourse to the commands of Allah, His Prophet (*peace be upon him*) and the persons in authority amongst them, they may extend the scope of resolution of the disputes

with non-believers applying the same principles. There is no denying the fact that obedience of the persons in authority or the rulers is subject to their obedience to the commandments of Allah Almighty and the guidance of His Prophet (*peace be upon him*). If the persons in authority or the rulers do not transgress the guidance and rulings of the Prophet (*peace be upon him*), their obedience is unconditional and mandatory for the believers. But if a dispute arises amongst the believers or they enter into a dispute with the persons in authority or the rulers, the parties are obliged to have recourse to the Holy Qur'aan and Sunnah of the Holy Prophet (*peace be upon him*) for determination and settlement of the dispute.<sup>26</sup>

The Holy Qur'aan suggests its believers, in the first instance, to seek reconciliation between two warring factions of believers; but if anyone of them commits aggression against the other, the believers must support and fight with the aggrieved against the aggressor and oppressor group until it submits to Allah's command (of peace and reconciliation); and if it seeks refuge in Allah's command, facilitate reconciliation between them with all fairness and justice, keeping aside any bias or partiality; surely Allah loves those who uphold justice.<sup>27</sup> Thus guidance of the Holy Qur'aan to its followers is to put their best efforts to resolve any dispute amongst their brothers and reunite them but warns them to be careful not to extend undue favour to the delinquent against the innocent or aggrieved. If they would do so, Allah is watchful of their partiality, favouritism and cunningness.

#### **Recourse to Justice:**

The second approach to fight crime and terrorism is recourse to justice, if reconciliation fails. In order to build confidence of the people on the justice system and strengthen the institution of judge, being chauffeur of the chariot of criminal justice system and to whom other organs of the system are to yield, Islam emphasizes importance of being a judge. Simultaneously, Islam stresses upon the quality of evidence and truthfulness of witnesses, as discussed in the succeeding paragraphs.

**Significance of judge:** Since the nature of disputes may range from contract to commercial and civil to criminal, which may be resolved through out of court settlement or before a judge, Islam encourages its followers not to avoid the responsibility to judge, if bestowed upon them, and do complete justice as it is closest to piety.<sup>28</sup> This verse of the Holy Qur'aan is in the nature of both motivation and a command i.e. firstly the Muslims are motivated to assume the responsibility of a judge to do justice but if anyone assumes this responsibility, he is obliged to do complete justice, without fear, favour or affection; and complete justice may not be done without involving himself in the case, putting himself in the shoes of the accused or the litigants. Unless the judge puts in his best efforts, reunites his legal acumen and mental faculties to analyze the evidence and sift the lie from the truth, he cannot do the requisite justice. It is for this reason that the Holy Prophet has said that he who has been appointed as a judge is slaughtered without knife.<sup>29</sup> But simultaneously, a true and dedicated judge who strives for right decision is rewarded twice, both for striving for justice and making right decision. But if a judge applies

his best juridical wisdom to make a decision but errs and decision turns out and proves to be wrong, even though he is rewarded for once.<sup>30</sup>

Having motivated the people to be judge as it is a virtue which is not less than piety, which is never blessed except to those who are God-fearing, Allah Almighty ordained them to do justice and *Ihsan* (magnanimity as well as wellbeing), honour the commitment and do not break the promises.<sup>31</sup> It is a generalized and specific command to those charged with justice, not only to do justice but also demonstrate magnanimity, if it does not infringe upon rights of the opposite party or compromise justice. Such people are also reminded of their oaths and promises; and the oath, commitment and promise of a judge is not anything except the justice.

**Significance of witness/evidence and rule of law:** The Holy Qur'aan does not leave a judge un-shield or handicapped to administer justice. As an administrative and moral support, it reminds the people to uphold justice, be true witnesses for Allah even if the testimony goes against them or their interests or parents or kinsmen. May be the delinquent is poor or rich, and they intend to favour or disfavor him; but Allah reminds them that He is more caring for him; they are advised not to leave the path of justice and if they would do so, Allah is all-aware of their acts and conducts.<sup>32</sup> This is to reiterate the efficacy and sanctity of justice that it should not be compromised on any ground whatsoever, including the classification of poor or rich, kins or adversaries. Allah is more caring for their status and needs and would take care of their needs; the judges and the witnesses should not compromise justice and true evidence. It is in this context that the Holy Prophet (*peace be upon him*) had cautioned that the previous nations were ruined because of injustice, as they had different standards of justice for their rich and poor. Their high ranks and influential committing offences were exonerated but poor and low ranks used to be punished by inflicting *Hadd* punishments. He reiterated that, even if his own daughter had committed theft in lieu of *Fatima Makhzumi*, he would have cut her hand in the enforcement of the punishment of *hadd*.<sup>33</sup> It may be thus calculated that the principles of 'equality before law', 'equal protection of law', respect for 'rule of law', *audi altrium partum* i.e. no one should be condemned unheard etc. are not alien to the Islamic jurisprudence.

The Holy Qur'aan re-emphasizes the Muslims to firmly stand for Allah and be witness for justice; and caution them that enmity or hatred of any people may not drag them to injustice or a false testimony against them; and reminds them that justice is closest to righteousness and be fear of Allah, who indeed is well acquainted with their deeds.<sup>34</sup> The witnesses are further cautioned that it is most suitable for them to narrate the true facts in their testimony; otherwise some other witness may be testified on oath to rebut their false testimony; so they should fear Allah and listen that Allah does not guide the rebellious people.<sup>35</sup> In another verse Allah Almighty directs the Muslims not to confuse the truth by overlaying it with falsehood or knowingly conceal the truth.<sup>36</sup> The witnesses are further commanded not to deny appearance for testimony when so called for or suppress the evidence and whosoever conceals the evidence, he carries a sinful heart; and Allah cautions them that He is aware of their deeds, whether in open or secret.<sup>37</sup>



### **What are Different Parameters of Criminal Justice System Recognized in Islam?**

A critical appreciation of the verses of the Holy Qur'aan and the traditions of the Prophet (peace be upon him) narrated in the preceding paragraphs provides certain parameters for administration of criminal justice and guidelines for the witnesses including the interrogators and investigators, viz: i) their testimony be aimed at bringing the truth before the judge, ii) they should not only appear for recording their evidence but should narrate complete facts in issue without hiding any aspect connected with the case and within their knowledge, iii) it must be based on true account of the occurrence or the facts in issue, iv) it should neither be fabricated nor concocted or intended to malign or secure conviction of an innocent or defeat the aggrieved party, v) it should not aim to book an opposite for the sake of enmity or hatred, vi) it should advance the cause of justice rather than frustrating the justice, vii) it should neither be confusing, misleading nor tainted with falsity or exaggeration, viii) it should be voluntary testimony, free of any duress, threat, coercion, favour or affection, ix) it should be made for the sake of Allah to promote justice, while fearing accountability from Allah Almighty, who is not only omnipresent even closer to the jugular vein, but absolutely knows acts, conduct, feelings and thoughts of the human beings. Notwithstanding these broad outlines, the main contours of the system may be delineated in the following paragraph.

#### **Accountability of Witnesses and Organs of Criminal Justice:**

Islam also emphasizes on accountability of witnesses and organs of justice systems, who include police officials, interrogators and investigators and judges. If the witnesses violate the principles enunciated in the preceding paragraph, they shall be held responsible in this world and on the Day of Judgment. Their accountability may be ensured by bringing solemn testimony to rebut their false evidence and bring true facts before the court. This responsibility may be fulfilled by the prosecuting officials and the court with their utmost sincerity, competence, faculties and available resources, as they are the instruments of and entrusted with administration of justice. It may be appreciated that justice is neither two plus two is equal to four nor may be measured with mathematical exactitudes. Justice is application of proper law and its execution in true letter and spirit. It is neither static nor rigid but flexible to the extent of magnanimity. This magnanimity attaches significance to the principles of natural justice and the concepts such as "accused is the blue eyed baby of law", "accused is a favorite child of law" or he is presumed to be innocent until proven guilty; but it does not conceive only acquittal as justice.

Acquittal and conviction are outputs of fair and free justice, which also negates the concept of conviction and punishments at all costs. However, if the acquittal rate surpasses the conviction, it means the courts are not demonstrating magnanimity but illustrating casual, carefree and irresponsible attitude; police, investigators and interrogators are displaying incompetence, inefficiency and indifference to the investigation and collection of necessary, relevant and specific evidence to succeed the prosecution; or false cases are being registered against the innocent citizens, which shall be the height of lawlessness, corruption, misuse and

mockery of law. Such a situation is bound to create the issues of law and order and is required to be addressed seriously and on war-footings. On the other hand, if the number of cases has reduced but conviction rate is more than acquittal it is an indicator that prosecuting and judicial organs of the state are functioning to the best of their ability and competence.

In the presence of efficient police with improved law and order situation and restored writ of the governments, the judicial magnanimity would require that benefit of reasonable doubt be given to the accused but if the doubt exists in most of the cases, magnanimity may not permit acquittals. In the given proposition, the reverse magnanimity would be to initiate disciplinary cases against the inefficient investigators, prosecutors and judges; and award condign sentences, besides ensuring execution in proven cases decided on merit and in accordance with law. This magnanimity requires that the judges must have just hearts and for the sake of upholding justice, they must be prepared to award the capital punishments in fit cases, as the key to peace through justice is equal protection of law, equality before law and rule of law.

### **Judgment to be based on Evidence Produced before the Court:**

Having ascertained the truth to the best of their competence, if the judge finds the evidence insufficient to connect the accused with the crime, he shall be entitled to acquittal, may that the acquittal resulted due to factual innocence of the accused or based on the suppressed or confused testimony or insufficient or lack of evidence. In this regard, the Holy Prophet (*peace be upon him*) had pronounced that if any person gets any (wrong) right or decision from me in his favour and in violation of right of his brother, due to his facile tongue or verbosity, he is advised not to take that right as it amounts to taking the fire in his hands.<sup>38</sup> The burden of nuisance created by such decision shall be on that person and he will have to face the curse and consequences. The eternal punishment is that they shall remain deprived of Allah's kindness, grace and love as well as intercession of the Holy Prophet on the dooms day. His incarceration in this world is that his testimony, being a perjurer, shall not be accepted forever in any *lis* unless he repents, remorse and mends his ways; and his refined conduct is proved beyond an iota of doubt.<sup>39</sup> Although the restriction of non-acceptance of testimony of a perjurer here relates to a slander case wherein a married woman is accused of *zina* (fornication) liable to *hadd* and the accusers fail to produce four eye witnesses to prove the accusation yet the same provision may be applied in other cases as well if the witness is a habitual liar, and has not improved his credibility. Such a witness is also liable for prosecution under Islamic law and the penal laws of Pakistan.<sup>40</sup>

### **Acquittal, Sentence and Repentance Exonerate the Crime:**

It may also be appreciated that after the acquittal or having undergone the terms of his punishment, the accused is not liable to any incarceration or hatred from the society. Islam does not leave the accused or convict stigmatized for the whole of his life. Rather it provides him the opportunities to compensate his offence, rehabilitate and play a constructive role in the society. In this regard, two incidents may be cited.

The first incident relates to execution of the sentence of stoning to death against *Ma'iz Aslami*, a companion of the Prophet (*peace be upon him*), who had voluntarily confessed of committing fornication and surrendered himself with a request to the Prophet (*peace be upon him*) to 'purify him' by inflicting the sentence of *rajam* i.e. stoning to death, a sentence which is graver in nature and impact. The Holy Prophet (*peace be upon him*) tried to avoid him as if he had not heard of his confession of the offence, as he was kind hearted and never intended that such an offence be brought to lime light or made public, firstly because it was committed in privacy and there was neither any complainant nor a witness except the confession of the accused, secondly, he never wanted that the accused who is otherwise repentant be punished for the offence which could have been easily concealed by him and thirdly the offence shall be publicized causing simultaneously disrespect to the accused and instigation for others. However, when the accused repeatedly and at least four times confessed his guilt at four different occasions, while it was ensured that he was neither suffering from insanity or intoxicated, the sentence was executed. It is reported with respect to this case or in another case of similar nature in which a female was executed to stoning to death that some of the witnesses to the execution cursed the accused when some blood drops of the convict fell on his clothes, the matter was reported to the Holy Prophet (*peace be upon him*) who otherwise was mourned on the execution. The Prophet (*peace be upon him*) admonished the witness and pronounced that repentance of the convict through the execution of *rajam* and blessing of Allah as a consequence thereof is so great that if it is offered on behalf of the entire people of Madina, it may be sufficient repentance of their sins to seek forgiveness and pardon of Allah Almighty.<sup>41</sup>

Similarly, when a person asked the Prophet (*peace be upon him*) after execution of as to why he was so mourned after the execution? The Holy Prophet replied that he was upset because one of his followers had been executed. The man asked then why did not he exonerate and let him free? The Prophet replied if he should not establish the boundaries of Allah (*Hudood-ul-Allah*)?<sup>42</sup> Meaning thereby if he does not inflict the punishments prescribed by Allah Almighty after the mandatory evidentiary and legal requirements have been fulfilled as it is his duty to ensure that the limits prescribed by Allah Almighty are not transgressed, who will ensure the same after his lifetime. But while doing so, no one should feel delighted. Rather it is a mourning occasion and fruit for thought as to why the individual committed the crime? How did he resort to crime? Did the family, friends and the society play their role to prevent him committing the crime? Who is responsible for the crime, the individual himself or the society? How rest of the people or like-minded may be prevented from committing the crimes? But regardless of the role of the society in promoting the crime or the offence being an individual act, the convict may not be isolated or stigmatized for ever for the offence of which he had been punished.

The second example relates to "*Wahshi bin Harb*", who had not only martyred Hazrat Hamzah (*may Allah pleased be with him*), real uncle of the Prophet (*peace be upon him*), but also mutilated his body and organs during the battle of

Uhad. The Holy Prophet described him 'syiid-us-shuhada' i.e. chief of the martyrs. After the conquest of Mecca, *Wahshi* expressed his desire to embrace Islam but was fearful of the revenge from the Prophet (*peace be upon him*) and the Muslims. He himself had also realized brutality of his act and was apprehensive that his offence was not pardonable. The Holy Prophet (*peace be upon him*) asked him that the blessing of Allah is very vast and all encompassing.<sup>43</sup> He may forgive his offence. But he was not satisfied on the plea that it is the prerogative of Allah either to pardon him or not. Then the Holy Prophet referred to another verse of the Holy Qur'aan wherein it is ordained that he who repents, embraces Islam; does good deeds, Allah will replace his evils with goods as He is very forgiver and beneficent.<sup>44</sup> He was not even satisfied with this assertion on the plea that he may not maintain good deeds in future. Then the Holy Prophet drew his attention to another verse of the Holy Qur'aan wherein the Prophet has been directed to convey to those servants of Allah, who had committed evil against their selves, not to get disappointed of the mercy of Allah; surely Allah may forgive their sins altogether; surely He is the Forbearing the Merciful.<sup>45</sup> Thereafter, he embraced Islam and returned the compensation of his offence by killing *Musailma Kazzab*, who had claimed false prophet-hood and was a continuous nuisance for the Prophet and the Muslims. This act of *Wahshi bin Harb* (*may Allah be pleased with him*) pacified the whole of the Muslim *ummah* and added his respect amongst Muslims.<sup>46</sup>

The above said incidents suggest that the door to repentance, forgiveness and remorse should always be kept open and never be shut down, if it is intended to serve the cause of Islam and humanity, which itself is the subject of Islam. This has also been experienced on the eve of fall of Makkah, when the Holy Prophet (*peace be upon him*) declared and is quoted as such in the Holy Qur'aan and his traditions there is no charge or blame against you, on this day, for whatever you have done in the past. May Allah also forgive you, surely He is the most merciful.<sup>47</sup> The declaration of the Prophet that the people of Makkah and *Quraish* whoever had committed any atrocity of any magnitude against the Muslims are given general amnesty except if they raise the arms again or commit breach of the Prophet's commands. The result is that a large number of non-Muslims including renowned chieftains of *Quraish* embraced Islam, which also contributed to the peaceful co-existence of Muslims and non-Muslims and spreading of Islam throughout the world.

There is no denying the fact that at times, the offender is an innocent agent or acting in misconception and the abettors, facilitators, aiders are the main culprits in the crime; hence cannot be spared or exonerated especially when they are continuing the criminal conspiracies and abetting the offences, causing colossal damage to life and property and causing '*fasad fil-ardh*'. But a balance in punishment and repentance is required to be maintained so as to punish the wrongdoers, eliminate the crime and provide an opportunity to the repentant to rehabilitate and help bring the peace back in the society. It is possible only if the commandments of Allah Almighty are followed in letter and spirit, rather than following the directions which support own desires and strategies and disregard those instructions which are in conflict to own point of view. It is in this realm that

Holy Qura'aan ordains '*udkhulu fissilmi kaa'fah*'<sup>48</sup> i.e. accept Islam in its entirety; enter into the religion of Islam while accepting all its dos and don'ts and not the teachings suited to you in a given situation. Such an approach has been described as "following own desire" and for such people the Holy Qur'aan suggests not to follow their own desire against Allah's commandments; and if they do so, they would stray away from the path of Allah; and those who stray from Allah's path would be inflicted severe punishment. They are also advised not to follow their will after the truth has revealed onto them and a clear order has been given.<sup>49</sup>

Allah Almighty has specifically commanded the rulers and the judges to do justice and judge amongst people according to the teachings of the Qur'aanic revelations, while disregarding their personal whims and desires; and those who do not decide or judge according to Allah's commandments conveyed through the revelations, they stray from the path of Allah and are disbelievers, unjust and rebellious.<sup>50</sup>

### **Conclusion:**

The upshot of above discussion is that the hypothesis that Islamic system of criminal justice is more comprehensive and effective to fight crimes and terrorism as compared to the ordinary systems of criminal justice stands reasonably proved. Islamic strategy to fight crimes and terrorism is unique and distinguished in itself vis-à-vis other systems. No other legal system recognizes these virtues concurrently, which not only sow the seeds of fraternity and compensation but also provide an opportunity for recourse to discipline and obedience as well as satisfy the instinct of revenge inherent in the aggrieved party.

"Islam is a religion of peace and tolerance and it stands for safety, security and sanctity of human life; Islam abhors unlawful killing of innocent people and strictly prohibits it".<sup>51</sup> In order to maintain peace and eliminate crime from the society, Islam prescribes a system of justice based on waiver/compromise, repentance and award of punishments which commensurate with the gravity of the offences. But before inflicting punishment, Islam signifies the need to differentiate and identify the real culprits and punish them, while freeing the innocent agents from the brutal clutches of the terrorists.

Take the example of a juvenile or tender age suicide bomber who explodes himself in a mob or a public place or a place of worship and causes massacre. Such an offender cannot be tried or punished as he is no more alive. Take another example where the actor is an animal or a pet with an explosive affixed on his body and exploded with a remote control device by the abettor, who is the real criminal/culprit. Take yet another example of a known lunatic, who was tamed and launched with a suicide jacket carrying balloons to please the individual. He was caught before the explosion could take place or turn into carnage. Take another example where family of the bomber has been kidnapped, put into solitary confinement with IEDs placed all around the building and he is steered to the site to cause explosion failing which his entire family would be exploded. He has neither any choice to run nor opportunity to have recourse to the LEAs as he is being continuously monitored by

the abettors and planners of the carnage. Fortunately, he is intercepted by the LEAs, apprehended and neutralized.

In the narrated scenarios, it shall not be legally possible to try the accused or award him the prescribed sentence of death. Even in the last scenario, the accused may not be indicted as no offence in fact had been consummated. Nevertheless in all the propositions, the planners, abettors and facilitators are the real culprits who are required to be identified, prosecuted and awarded death sentences which would be commensurating with the gravity of the consummated offences and serving the purpose of criminal justice in Islam. Leaving them escort free may not be in line with the injunctions of Islam, except in cases of waiver, compensation or proved repentance before apprehension.

Even the general amnesty would require concurrence and pardon of the aggrieved parties if the accused or assailants are known. But sentencing the puppets and leaving the puppeteers may pronounce weakness of the investigating, prosecuting and other judicial organs of the state. Therefore, awarding death or more severe punishment, just to create deterrence, to a person who had not killed or caused death of any person would amount to killing of a person and inviting the wrath of Allah Almighty and accusation of 'judicial killings'. All the stake holders must advance in a coordinated manner so as to achieve the goal of eliminating the menace of terrorism and resorting peace through administration of criminal justice.

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### References:

<sup>1</sup> Al-Qur'an, Al-Maedah:32

<sup>2</sup> The main addressees in the verse are the sons of Israel i.e. Yaqoob (*peace be upon him*). This reference is to Christians and Jews who were known as the offspring of Prophet Yaqoob and existing at the time of advent of Islam or revelation of the said verse.

<sup>3</sup> Al-Qur'an, Al-Baqarah:195 and Al-Quran, Al-Nisa:29

<sup>4</sup> *Saheeh Al Bukhari, KitabulMaghazi*, Chapter 4, Tradition 1555, p. 4021; and *Saheeh Al Muslim, KitabulIman*, Chapter 1, Tradition 97; as cited by Dr Tahirul Qadri, *Dehshat Gardi and Fitnah Al-Khawarij* (Lahore: Minhajul Qur'aan Publications) 2010, pp. 94-100.

<sup>5</sup> Al-Qur'an, Al-Maedah:33-34

<sup>6</sup> Ibid, verse 45.

<sup>7</sup> Al-Qur'aa, Al-Qasas:77. This in fact was an advice to *QAROON*, who was from the tribe of Moses (*peace be upon him*), which has been quoted in the Holy Qur'aan; but applies to everyone as the desire of Allah.

<sup>8</sup> *Saheeh Al Bukhari*, volume 3, Tradition 1056. Available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>9</sup> Al-Qur'an, Chapter 4, *Surah Al-Nisa*, verse 142.

<sup>10</sup> *Saheeh Al Muslim, Babul Adab*, Tradition 2087 and 2088. Available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>11</sup> *Al-Mishqat-ul-Masabeeh*, Chapter '*qatl ahl-ur-raddah wass'aadah bil fasad*', p. 308, available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>12</sup> Al-Qur'an, Al-Baqarah:191

<sup>13</sup> Al-Qur'an, Al-Baqarah:179

<sup>14</sup> Al-Qur'an, Al-Nisa:93

<sup>15</sup> Al-Qur'an, Al-Burooj:10

<sup>16</sup> *Jam'eTirmizi*, volume 1, Chapter *Al-birr-i-was-silat-ur-rahim*, Tradition 2069. Available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015

<sup>17</sup> *Sunan-e-Nisae*, Volume 3, Tradition 420 quoted by Abu Bakr (*Raziyallaho Anh*). Available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>18</sup> Al-Qur'an, Al-Teen:5

<sup>19</sup> *Ibid*, verse 92. In case the accused is unable to pay the amount of *diyat* (compensation) or does not own a slave, he is required to keep fasts for consecutive two months. However, since the slavery has been abolished in Islam, the balance sentence is payment of *diyat* which according to Section 331 of the PPC may be paid in installments spread over a period of five years.

<sup>20</sup> An exclusive discussion dated July 25, 2016 with Mufti Abu Sufyan, affiliated with Jamia Ashrafiya, a religious seminary at Lahore.

<sup>21</sup> Al-Qur'an, Al-Furqan:70

<sup>22</sup> Al-Qur'an, Ha Meem Sajdah:34-35

<sup>23</sup> Al-Qur'an, Al Nahl:125-128

<sup>24</sup> Al-Qur'an, Aal-i-Imran:102

<sup>25</sup> Al-Qur'an, Al-Nisa:59

<sup>26</sup> *Abdul Majid Vs Government of Pakistan* (PLD 2009 SC 861 (865). The appellant had challenged provisions of the Pakistan Arms Ordinance 1965 and the Arms Rules 1924 being repugnant to the injunctions of Islam as the people are not permitted to keep the weapons for protection of self, property and honour. Dr Allama Khalid Mehmood writing the judgment for the bench declared that consolidating the law relating to the sale, purchase and possession of the weapons does not constitute refusal to keep the weapon; hence the law may not be declared as against the injunctions of Islam as laid down in the Holy Qur'aan and Sunnah.

<sup>27</sup> Al-Qur'an, Al Hujrat:10

<sup>28</sup> Al-Qur'an, Al Maedah:8

<sup>29</sup> This tradition of the Holy Prophet (*peace be upon him*) has been cited by Abu Huraira (*Raziyallaho Anh*) in *Al-Tirmazi*, volume1, Chapter *Al-Qaza*, Tradition 1349. Available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>30</sup> *Sunan-e-Nisa'ee*, volume 3, Chapter *Adabul Qaza*, Tradition 1685. This tradition has also been quoted by Amr bin Al-Aaas (*Raziyallaho Anh*) with some variation of words in *Saheeh Al-Muslim*, volume 2, Tradition 1994. Available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>31</sup> Al-Qur'an, Al-Nahl:90

<sup>32</sup> Al-Qur'an, Al-Nisa:135

<sup>33</sup> *Saheeh Al Muslim*, volume 2, Chapter *Al-Hudood*, Tradition 1917/1919, available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>34</sup> Al-Qur'an, Al-Maedah:8

<sup>35</sup> Al-Qur'an, Al-Maedah:108

<sup>36</sup> Al-Qur'an, Al-Baqarah:42

<sup>37</sup> Al-Qur'an, Al-Baqarah:282-283

<sup>38</sup> *Sunan-e-Nisa'ee*, volume 3, Chapter *Adabul Qaza*, Tradition 1705 and *Saheeh Al-Muslim*, volume 3, Tradition 1980. Available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>39</sup> Al-Qur'an, Al-Noor:4-5

<sup>40</sup> See for example: Chapter XI of the PPC more specifically Sections 191-203, which deal with giving, fabricating, using false evidence or giving false information.

<sup>41</sup> *JameAl-Termazi*, Volume 1, Tradition 1466; and *Sunan-e-Abu Dawood*, Volume 3, Tradition 1023, available at [www.easyquranwahadees.com](http://www.easyquranwahadees.com), accessed on November 10, 2015.

<sup>42</sup> Ibid (tradition of *Ma'iz Aslami*).

<sup>43</sup> Al-Qur'an, Al-Aa'raf:156

<sup>44</sup> Al-Qur'an, Al-Aa'raf:156

<sup>45</sup> Al-Qur'an, Al-Zumur:53

<sup>46</sup> *Ma'iz Aslami* tradition op cit.

<sup>47</sup> Al-Qur'an, Al-Yousuf:92. This verse relates to the dialogue between Prophet Yousuf (*peace be upon him*) and his brothers, which concession was also extended to the people of Mecca by the Holy Prophet (*peace be upon him*) while reciting the same verse and declared that people of Mecca as freemen rather than slaves. See also Molana Waheed-ud-Din Khan, *Paigambar-e-Inqilab*, (Lahore: Maktaba Al-Ashrafia) 1983, p 126.

<sup>48</sup> Al-Qur'an, Al-Baqarah:208, which ordains, "Join the religion of Islam in its entirety, and thereafter do not follow the footsteps of *satan*; verily is your open and declared enemy".

<sup>49</sup> Al-Qur'an, Al-Nisa:125

<sup>50</sup> Al-Qur'an, Al-Ma'idah:44-45 and 47-49; Al-Qur'an, Saad:26. The address in the later was is with reference to the instructions to Prophet Dawood (*peace be upon him*).

<sup>51</sup> *Watan Party Vs Federation of Pakistan* (PLD 2011 SC 997, p.1018).